

(28,500)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 545.

TAKUJI YAMASHITA AND CHARLES HIO KONO,
PETITIONERS,

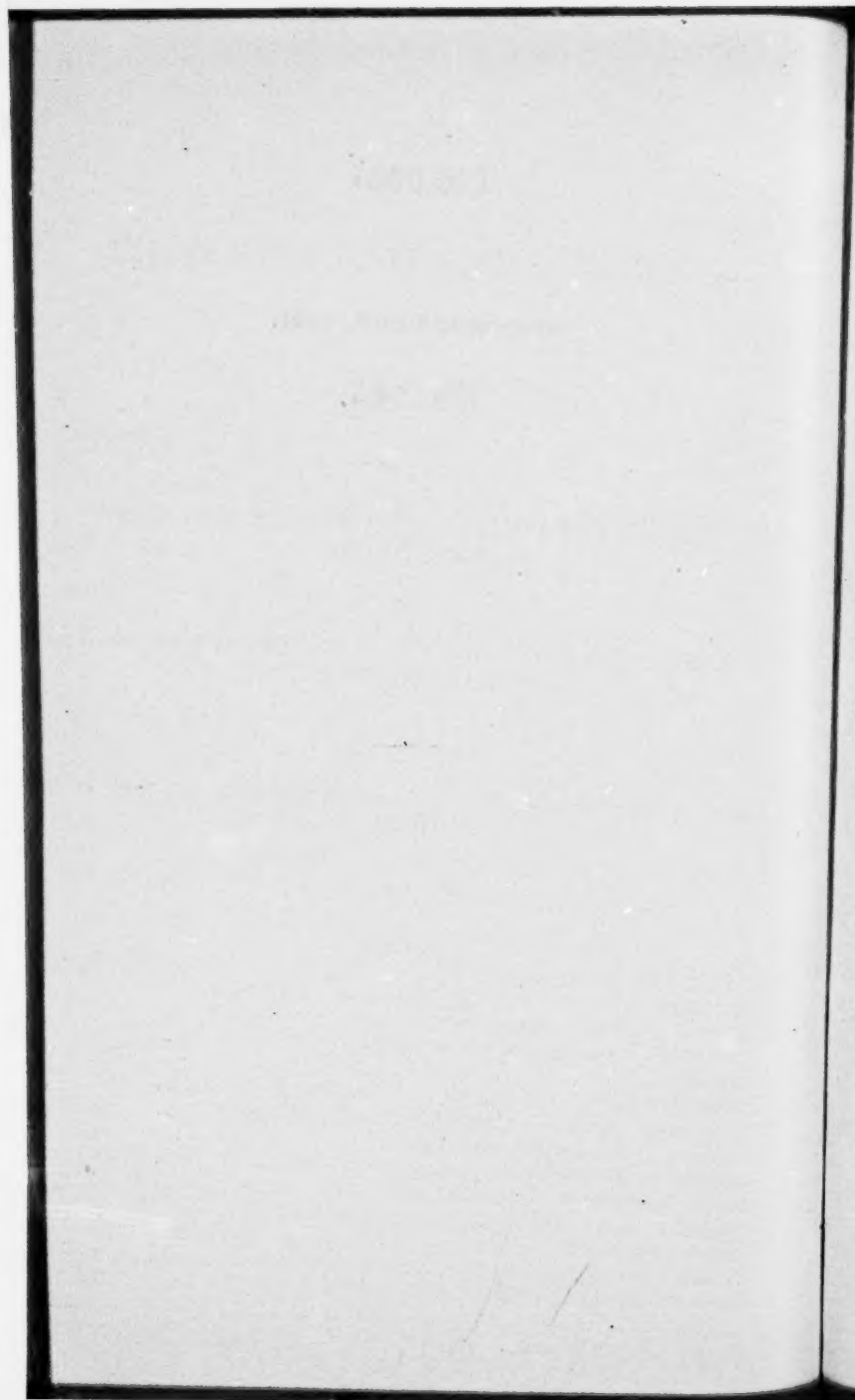
vs.

J. GRANT HINKLE, AS SECRETARY OF STATE OF THE
STATE OF WASHINGTON.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF WASHINGTON.

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1 In the Supreme Court of the State of Washington.

No. 16567.

TAKUJI YAMASHITA and CHARLES HIO KONO, Plaintiffs,

VS.

J. GRANT HINKLE, as Secretary of State of the State of Washington,
Defendant.

Notice of Hearing of Application.

[Stamp:] Filed in Supreme Court of Washington May 16, 1921.
C. S. Reinhart, Clerk. F. S. G.

To the above-named defendant, J. Grant Hinkle, as secretary of
State of the State of Washington:

You are hereby notified that the plaintiffs will call the attached
application for writ of mandate up for hearing before the Supreme
Court of the State of Washington at its court room in the temple
of justice in the City of Olympia, Washington, upon the sitting of
the said court in its morning session on the 20th day of May, 1921,
or as soon thereafter as the said matter can be heard.

(Signed) SHANK, BELT & FAIRBROOK,
Attorneys for said Plaintiffs.

2 In the Supreme Court of the State of Washington.

No. 16567.

TAKUJI YAMASHITA and CHARLES HIO KONO, Plaintiffs,

VS.

J. GRANT HINKLE, as Secretary of State of the State of Washington,
Defendant.

Application for Writ of Mandate.

[Stamp:] Filed in Supreme Court of Washington May 14, 1921.
C. S. Reinhart, Clerk. F. S. G.

Comes now Takuji Yamashita and Charles Hio Kono and make
application herein for a writ of mandate directed to the above named
defendant J. Grant Hinkle, as secretary of state of the State of Wash-
ington, requiring the said J. Grant Hinkle to receive and file the
articles of incorporation of Japanese Real Estate Holding Company,
heretofore tendered to the said defendant by the said plaintiffs as
set forth in the accompanying affidavit. This application is based

upon the affidavit hereto attached, which is hereby referred to and made a part of this application.

(Signed) SHANK, BELT & FAIRBROOK,
Attorneys for said Plaintiffs.

3 In the Supreme Court of the State of Washington.

No. 16567.

TAKUJI YAMASHITA and CHARLES HIO KONO, Plaintiffs,

VS.

J. GRANT HINKLE, as Secretary of State of the State of Washington,
Defendant.

Affidavit in Support of Application for Writ of Mandate.

STATE OF WASHINGTON,
County of King, ss:

Takuji Yamashita, being first duly sworn, on oath deposes and says:

I am one of the above named plaintiffs and make this affidavit on behalf of myself and my above named co-plaintiff for the purpose of obtaining a writ of mandate out of this court directed to the above named defendant J. Grant Hinkle, as secretary of state of the State of Washington, requiring the said defendant to receive and file articles of incorporation of Japanese Real Estate Holding Company heretofore tendered to the said defendant by these plaintiffs as hereinafter set forth; the said defendant is the duly elected, qualified and acting secretary of state of the state of Washington; these plaintiffs are each of them natives of the Empire of Japan, but after all proceedings required under the naturalization laws of the United States of America had been had each of these plaintiffs have been duly naturalized by a superior court of the State of Washington, and

4 have been duly admitted to citizenship in the United States of America by such superior courts and this affiant is now and for more than ten years last past has been an actual and bona fide resident of the State of Washington. Heretofore these plaintiffs, desiring to form a corporation under and pursuant to the laws of the State of Washington to be known as Japanese Real Estate Holding Company, duly made, executed and acknowledged in triplicate articles of incorporation of said Japanese Real Estate Holding Company, a true and correct copy of which articles is hereto attached and marked "Exhibit A," hereby referred to and by this reference made a part of this affidavit, and upon the 5th day of May, 1921, tendered one original copy of such articles so duly executed and acknowledged together with the necessary filing fee to the said defendant and demanded that he accept and file the same; but the said defendant refused to accept and file the same and still refuses so to do upon the claim that these plaintiffs being of the Japanese race were not at the time of their naturalization and never

at any time have been and are not now entitled under the naturalization laws of the United States of America to be admitted to citizenship in the United States of America and are therefore not entitled under the laws of the State of Washington to form a corporation with sole power of acquiring and holding real estate within the State of Washington, or to file articles of incorporation naming these plaintiffs as sole trustees of the said corporation; thereby the said defendant is depriving these plaintiffs of a right of citizenship duly guaranteed to them by the constitution and the laws of the United States of America and of the State of Washington, and particularly by the fourteenth amendment to the constitution of the United States and the naturalization laws of the United States, and

5 these plaintiffs have no plain, speedy or adequate remedy in the course of law and therefore herewith make application to this court for a writ of mandate directing and commanding the said defendant to accept and file the said articles of incorporation.

(Signed)

TAKUJI YAMASHITA.

Subscribed and sworn to before me this 6th day of May, 1921.

(Signed)

H. C. BELT,

*Notary Public in and for the State of
Washington, Residing at Seattle.*

6

EXHIBIT "A."

Articles of Incorporation of Japanese Real Estate Holding Company.

Know all men by these presents, that we, the undersigned, Takuji Yamashita and Chas. Hio Kono, both being natives of Japan, but being duly naturalized citizens of the United States of America, and the said Takuji Yamashita being a resident of the State of Washington, do hereby associate ourselves together for the purpose of forming a corporation under the general incorporation laws of the State of Washington relating to the organization and management of private corporations, and do hereby certify and adopt the following

Articles of Incorporation.

Article I.

The name of this corporation shall be Japanese Real Estate Holding Company.

Article II.

The objects and purposes for which this corporation is formed are and shall be: To buy and otherwise acquire, own, hold, develop, improve, manage, sell, convey, transfer and lease and dispose of real estate of every nature and description within the State of Washington.

Article III.

The capital stock of this corporation shall be ten thousand dollars, divided into one hundred shares of the par value of one hundred dollars each.

7 Article IV.

The time of the existence of this corporation shall be fifty years.

Article V.

The principal place of business of this corporation shall be Seattle, King County, Washington.

Article VI.

The number of trustees of this corporation shall be two, and the names of those of the trustees who shall manage the concerns of the corporation until the 5th day of September, 1921, shall be Takuji Yamashita and Chas. Hio Kono.

In witness whereof, the said Takuji Yamashita and Chas Hio Kono have hereunto set their hands and seals in triplicate this 5th day of April, 1921.

TAKUJI YAMASHITA. [SEAL.]
CHAS HIO KONO. [SEAL.]

STATE OF MONTANA,
County of Chouteau, ss:

This is to certify, that on this 12th day of April, 1921, before me, the undersigned, a notary public in and for said county and state, personally appeared Chas Hio Kono to me personally known to be the individual described in and who executed the foregoing Articles of Incorporation, and duly acknowledged to me that he signed the same as his own free act and deed, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal this the day and year in this certificate first above written.

[SEAL.]

WILL J. BOWMAN,
Notary Public in and for the State of
Montana, Residing at Big Sandy.

My commission expires Feb. 28th, 1924.

8 STATE OF WASHINGTON,
County of King, ss:

This is to certify, that on this 4th day of May, 1921, before me, the undersigned, a notary public in and for said county and

state, personally appeared Takuji Yamashita, to me known to be the individual described in and who executed the foregoing Articles of Incorporation, and duly acknowledged to me that he signed the same as his own free act and deed, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.
[SEAL.]

H. C. BELT,
*Notary Public in and for the State of
Washington, Residing at Seattle.*

9 In the Supreme Court of the State of Washington.

No. 16567.

TAKUJI YAMASHITA and CHARLES HIO KONO, Plaintiffs,

VS.

J. GRANT HINKLE, as Secretary of State of the State of Washington,
Defendant.

Demurrer.

[Stamp:] Filed in Supreme Court of Washington May 16, 1921.
C. S. Reinhart, Clerk. F. S. G.

Comes now the defendant and demurs to the application for writ of mandate, and the affidavit in support of such application, and each of them, in the above entitled case, for the reason that such application and affidavit do not contain facts sufficient to constitute a cause of action.

(Signed)

L. L. THOMPSON,
Attorney General;
NAT. U. BROWN,
Attorneys for Defendant.

Office and Post Office Address: Temple of Justice, Olympia, Washington.

(Stamp:) Copy hereof received this May 13, 1921, Shank, Belt & Fairbrook.

10 In the Supreme Court of the State of Washington.

No. 16567.

TAKUJI YAMASHITA and CHARLES HIO KONO, Plaintiffs,

vs.

J. GRANT HINKLE, as Secretary of State of the State of Washington,
Defendant.

Brief of Plaintiffs.

[Stamp:] Filed in Supreme Court of Washington May 19, 1921.
C. S. Reinhart, Clerk. F. S. G.

It is not the desire of the plaintiffs here to enter into any extended arguments on the merits of this case. It is apparent in the case of *In re Yamashita*, 30 Wash. 234, which so far as we know has never been modified by this court nor overruled by the United States courts, that the view of this court is that Yamashita is not a citizen of the United States. Inasmuch as the same conclusion would undoubtedly have been reached with respect to Kono, it is apparent, unless we could convince the court that in the decision in 30 Washington was erroneous, no good purpose would be subserved by extended argument.

It is the desire, however, of counsel with whom counsel for plaintiffs in this action are associated to present this matter to the Supreme Court of the United States, and inasmuch as we entertain no hope of changing the court's view as to the correctness of the decision in *re Yamashita* we desire to submit the case on the brief of counsel for applicant in that case, and without citation of further authority.

11 In support of the petition herein the court is respectfully referred to the case of *In re Rodriguez*, 81 Fed. 337.

We respectfully wish to request the court, however, that as early a decision be rendered on the petition herein as the business of the court will permit of.

Respectfully,

(Signed)

SHANK, BELT & FAIRBROOK,
Attorneys for Plaintiffs.

12 In the Supreme Court of the State of Washington.

No. 16567.

TAKUJI YAMASHITA and CHARLES HIO KONO, Plaintiffs,
vs.

J GRANT HINKLE, as Secretary of State of the State of Washington,
Defendant.

Defendant's Points and Authorities.

[Stamp:] Filed in Supreme Court of Washington May 19, 1921.
C. S. Reinhart, Clerk. F. S. G.

The plaintiffs herein are applying to this court for writ of mandamus directed against J. Grant Hinkle as Secretary of State, requiring him to receive and file articles of incorporation of a certain Japanese real estate holding company of which they are the incorporators. In the affidavit and in the proposed articles of incorporation the plaintiffs recite that they are both natives of Japan and have been duly naturalized citizens of the United States. The defendant has demurred to the application and affidavit and the matter comes on to be heard upon that demurrer.

The sole question involved is whether these plaintiffs are citizens of the United States. It may be conceded by the defendant that these plaintiff- are in possession of citizenship papers issued by the superior court of Pierce county in May 1902. The contention of the defendant is that the order of the superior court admitting these plaintiffs to citizenship was void and of no effect.

The question is not an open one in this state, having been decided adversely to these plaintiffs in re Yamashita, 30 Wash. 234. In that case one of these plaintiffs sought admission to the bar of the state of

13 Washington. This court held that the judgment of the superior court admitting him to citizenship shows upon its face that the court was without authority, and such judgment may be attacked at any time and in any proceeding. It further held that the right of naturalization being restricted to free white persons, to aliens of African nativity and to persons of African descent, a native of Japan would not be entitled to citizenship.

The purpose of this action is to obtain a later adjudication of the matter by this court so that the question may be presented to the Supreme court of the United States upon a writ of error. Upon the authority of the Yamashita case the writ should be denied.

Respectfully submitted,
(Signed)

L. L. THOMPSON,
Attorney General;
NAT U. BROWN,
Attorneys for Defendant.

Office and Post Office Address: Temple of Justice, Olympia,
Washington.

14 In the Supreme Court of the State of Washington.

No. 16567.

TAKUJI YAMASHITA and CHARLES HIO KONO, Plaintiffs,

vs.

J. GRANT HINKLE, as Secretary of State of the State of Washington,
Defendant.

Order, Friday, May 20, 1921.

[Stamp:] Filed in Supreme Court of Washington. C. S. Reinhart, Clerk, F. S. G.

It is by the court ordered that the petition for mandamus in the above entitled cause be, and the same is hereby denied.

15 In the Supreme Court of the State of Washington.

No. 16567.

TAKUJI YAMASHITA and CHARLES HIO KONO, Plaintiffs,

vs.

J. GRANT HINKLE, as Secretary of State of the State of Washington,
Defendant.

Petition for Rehearing.

[Stamp:] Filed in Supreme Court of Washington Jun. 9, 1921.
C. S. Reinhart, Clerk, F. S. G.

Come now the above mentioned plaintiffs, Takuji Yamashita and Charles Hio Kono, and respectfully petition this court for a rehearing either before the department that heard the said application, or before the entire court en banc, as to the court shall seem proper. The petition is made upon the following grounds, to-wit:

The decision of the department herein denying the writ of mandamus asked for herein deprives these plaintiffs of a right of citizenship guaranteed to them by the Constitution and the Laws of the United States of America, and the State of Washington, and particularly by the 14th Amendment to the Constitution of the United States, and the Naturalization Laws of the United States.

Respectfully submitted,

(Signed)

SHANK, BELT & FAIRBROOK,
Attorneys for Plaintiff.

16 In the Supreme Court of the State of Washington. En Banc.

No. 16567.

TAKUJI YAMASHITA and CHARLES HIO KONO, Plaintiffs,

vs.

J. GRANT HINKLE, as Secretary of State of the State of Washington,
Defendant.

Order, Tuesday, June 28, 1921.

[Stamp:] Filed in Supreme Court of Washington. C. S. Reinhart, Clerk, F. S. G.

The petition for rehearing in the above entitled cause having been heretofore submitted to the court, and the court having fully considered the same, and being fully advised in the premises, it is now by the court ordered that the said petition be, and the same is, hereby denied.

17 In the Supreme Court of the State of Washington

No. 16567.

TAKUJI YAMASHITA et al., Plaintiffs,

vs.

J GRANT HINKLE, as Secretary of State of Washington, Respondent.

Judgment.

This cause having been heretofore submitted to the court upon the petition of the plaintiffs for a writ of mandamus to compel the respondent to receive and file the articles of incorporation of the Japanese Real Estate Holding Co., and upon the argument of counsel, and the court having fully considered the same, it is now here ordered and adjudged that the petition be, and the same is, hereby denied and that the said J. Grant Hinkle, as Secretary of State have and recover of and from the said Takuji Yamashita and Charles Hio Kono the costs of this action taxed and allowed at Fifteen Dollars, and that execution issue therefor.

10 TAKUJI YAMASHITA ET AL. VS. J. G. HINKLE, ETC.

18 In the Supreme Court of the State of Washington.

No. 16567.

TAKUJI YAMASHITA and CHARLES HIO KONO, Plaintiffs,

v.

J. GRANT HINKLE, as Secretary of State of the State of Washington,
Defendant.

Præcipe.

Filed in Supreme Court of Washington Jul. 11, 1921. C. S. Reinhart, Clerk. F. S. G.

To the Clerk of said Court:

Please prepare transcript of the entire record in the above entitled case.

(Signed)

SHANK, BELT & FAIRBROOK,
Attorneys for Plaintiffs.

19 STATE OF WASHINGTON,
County of Thurston, ss:

I, C. S. Reinhart, Clerk of the Supreme Court of the State of Washington, hereby certify that the above and foregoing is a full, true and correct transcript of the record in the above entitled cause as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, this 8th day of August, 1921.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART,
Clerk.

20 In the Supreme Court of the State of Washington.

No. 16567.

TAKUJI YAMASHITA and CHARLES HIO KONO, Plaintiffs,

vs.

J. GRANT HINKLE, as Secretary of State of the State of Washington,
Defendant.

Stipulation Regarding Record.

It is hereby stipulated that the certified copy of the transcript of record in the above entitled cause now on file with the clerk of the Supreme Court of the United States in the case of Takuji Yamashita

and Charles Hio Kono, petitioners vs. J. Grant Hinkle, as Secretary of State of the State of Washington, defendant, being cause No. 545 of the October term 1921, may be taken as a return to the writ of certiorari granted out of the said court and cause on the 24th day of October, 1921, said writ being dated the 1st day of November, 1921.

Dated this 15th day of November, 1921.

SHANK, BELL & FAIRBROOK,
Attorney for Plaintiffs.

L. L. THOMPSON,
*Attorney General,
Attorneys for Defendant.*

21 STATE OF WASHINGTON,
County of Thurston, ss:

I, C. S. Reinhart, Clerk of the Supreme Court of the State of Washington, hereby certify that the above and foregoing is a full, true and correct copy of the a stipulation of counsel as the same was filed on the 15th day of November, 1921 and now remains of record in my office, which is forwarded as a return to the writ of Certiorari just filed.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, this 15th day of November, 1921.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART,
Clerk.

22 Filed in Supreme Court of Washington Nov. 15, 1921. C. S.
Reinhart, Clerk. F. S. G.

22 16567.

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Washington, Greeting:

Being informed that there is now pending before you a suit in which Takuji Yamashita and Charles Hio Kono are plaintiffs, and J. Grant Hinkle, as Secretary of State of the State of Washington, is defendant, No. 16567, which suit was removed into the said Supreme Court by virtue of an application for a writ of mandate, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme

23 Court and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and

proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the first day of November, in the year of our Lord one thousand nine hundred and twenty-one.

WM. R. STANSBURY,

Clerk of the Supreme Court of the United States.

[[Endorsed:]] File No. 28,500. Supreme Court of the United States, No. 545, October Term, 1921. Takuji Yamashita et al. vs. J. Grant Hinkle, as Secretary of State of the State of Washington. Writ of Certiorari.

24 [[Endorsed:]] File No. 28,500. Supreme Court U. S. October Term, 1921. Term No. 545. Takuji Yamashita, et al., Petitioners, vs. J. Grant Hinkle, as Sec'y of State, &c. Writ of Certiorari and Return. Filed Dec. 5, 1921.

25 [[Endorsed:]] Supreme Court of the United States. October Term, 1921. Takuji Yamashita and Charles Hio Kono, Petitioners, vs. J. Grant Hinkle as Secretary of State of the State of Washington, Respondent. Petition and Certiorari. Transcript of Record. Corwin S. Shank, Attorney for Petitioners, 1002 Alaska Building, Seattle, Washington.

Endorsed on cover: File No. 28,500. Washington Supreme Court. Term No. 545. Takuji Yamashita and Charles Hio Kono, petitioners, vs. J. Grant Hinkle, as Secretary of State of the State of Washington. Petition for writ of certiorari and Exhibit thereto. Filed September 22, 1921. File No. 28,500.